

**South Dakota Board of Medical and Osteopathic Examiners
BOARD MEETING AND PUBLIC RULES HEARING**

Thursday, March 3, 2016
9:00 am (central time)/8:00 am (mountain time)

To participate by:

DDN Sites: Pierre: CAP A, 500 E. Capitol, Pierre, SD 57501
Rapid City: TIE Dakota Room, 1925 Plaza Blvd, Rapid City, SD 57701
Winner: Department of Transportation, 1200 E. Hwy 44, Winner, SD 57580

In person: Board Conference Room, 101 N. Main Ave., Suite 215 (on 2nd floor), Sioux Falls, SD

Unapproved Draft Minutesⁱ

South Dakota Board of Medical and Osteopathic Examiners Public Meeting and Public Rules Hearing- 9:00 am (CT) Thursday, March 3, 2016

Boards Members Present: Kevin Bjordahl, MD; Ms. Deb Bowman; Walter Carlson, MD; Mary Carpenter, MD; Laurie Landeen, MD; Brent Lindbloom, DO; Mr. David Lust; Jeffrey Murray, MD; Elmo Rosario, MD

Board Staff Present: Margaret Hansen, PA-C; Mr. Tyler Klatt; Ms. Jane Phalen; Ms. Misty Rallis

Board Counsel: Steven Blair

Staff Counsel: William Golden

Attendees: Jason Culberson, EMT Paramedic, Rapid City Fire Department
Wade Nyberg, Assistant City Attorney, Rapid City
Mark East, South Dakota State Medical Association (SDSMA)
Dr. James Oury
Dr. Steven Myers (via phone)

1. Dr. Walter Carlson, president of the Board, called the meeting to order at 9:00 am. Roll was called and a quorum was confirmed. A motion: to approve the agenda was ratified by roll call vote (Landeen/unanimous).
2. The scheduled Public Hearing on Administrative Rules was called to order. Dr. Carlson, president of the Board, appointed Mr. Steven Blair to preside over the hearing. Mr. Blair explained the proceedings, and introduced the proposed rules.

Primarily based on LRC comments, board staff requested the withdrawal of the following proposed rules:

- a. *Article 20:47, Chapter 20:47:03, Section 20:47:03:13-Physicians and Surgeons Licensure – Locum Tenens Certificate;*
- b. *Article 20:52, Chapter 20:52:01, Section 20:52:01:03:02 – Supervision of a licensed physician assistant-separate practice location;*
- c. *Article 20:63, Chapter 20:63:01,02&03 – Athletic Trainers – General Provisions;*
- d. *Article 20:66, Chapter 20:66:03 - Physical Therapists and Physical Therapist Assistants – Continuing Education;*
- e. *Article 20:83, Chapter 20:83:04, Section 20:83:04:03 – Licensed Nutritionists – Continuing Education - Waiver.*

A motion: to enter into executive session pursuant to SDCL 1-25-2(3) to consult with legal counsel was ratified by roll call vote (Landeen/unanimous).

The public rules hearing resumed.

A motion: to withdraw *Article 20:47, Chapter 20:47:03, Section 20:47:03:13-Physicians and Surgeons Licensure – Locum Tenens Certificate*, and direct the board staff to schedule a declaratory rules hearing regarding *SDCL 36-4-20.4-Duration of locum tenens certificates-privileges of certificate holder* was ratified by roll call vote (Landeem/unanimous).

A motion: to pursue legislation for authority to amend *SDCL 36-4-20.4* to state that a locum tenens certificate may be issued one time, and may be extended one additional time for 60 days was ratified by roll call vote (Landeem/unanimous).

A motion: to withdraw *Article 20:52; Chapter 20:52:01, Section 20:52:01:03:02 – Supervision of a licensed physician assistant-separate practice location; Article 20:63; Chapter 20:63:01,02&03 – Athletic Trainers; Article 20:66; Chapter 20:66:03 - Physical Therapists and Physical Therapist Assistants – Continuing Education; and Article 20:83, Chapter 20:83:04, Section 20:83:04:03 – Licensed Nutritionists- Continuing Education – Waiver* was ratified by roll call vote (Bjordahl/unanimous).

Mr. Klatt introduced proposed rule *Article 20:83: Chapter 20:83:04, Section 20:83:04:01&02: Licensed Nutritionist – Continuing Education*. A member of the public from Yankton, South Dakota, Karley Briggs, called in to listen to the proceedings for this rule. There were no parties in attendance to offer testimony. No supporting comments were received, no opposing comments were received, and there was no further discussion. A motion: to approve *Article 20:83; Chapter 20:83:04, Section 20:83:04:01&02: Licensed Nutritionist – Continuing Education* was ratified by roll call vote (Bjordahl/unanimous).

Mr. Klatt introduced proposed rule *Article 20:64, Chapter 20:64:02,&04 – Occupational Therapist and Occupational Therapy Assistant – Licensure Requirements, Continuing Competency*. Mr. Klatt informed the Board that the Occupational Therapist Advisory Committee had requested an amendment to *Section 20:64:04:03* to change the phrase “occupational therapist” to “occupational therapist and occupational therapy assistant”. There were no parties in attendance to offer testimony. No supporting comments were received, no opposing comments were received, and there was no further discussion. A motion: to amend *Article 20:64, Chapter 20:64:02,&04* as stated above, and to approve the amended rule was ratified by roll call vote (Landeem/unanimous).

There being no further questions or discussion, the public rules hearing was closed.

3. A motion: to approve the minutes of the December 3, 2015, Board meeting was ratified by roll call vote (Murray/unanimous).
4. A motion: to approve the new licenses, permits, certificates, and registrations issued between December 1, 2015 through February 29, 2016, was ratified by roll call vote (Murray/unanimous).
5. Public Hearings:
 - a. Licensee Beau D. Braun, PA: A motion: to approve his request for discharge from the South Dakota Health Professionals Assistance Program (HPAP) and return his license to an unrestricted status was ratified by roll call vote (Bjordahl/unanimous).
 - b. Leann K. Batiz, CNP: The South Dakota Board of Nursing submitted an Agreed Disposition and Waiver of Hearing for Board consideration. A motion: to approve the Agreed Disposition and to have the President of the Board, Dr. Walter Carlson, sign the final order was ratified by roll call vote (Bjordahl/unanimous).

The petition from Dr. Nathan Long, emergency room physician and medical director for the Rapid City Fire Department, and Jason Culberson, Paramedic, Rapid City Fire Department was reviewed by the Board. The board staff expressed concerns about the possibility of the loss of immunity for paramedics, hospitals, and physicians when a call is deemed non-emergent. Mark East, South Dakota State Medical Association (SDSMA), expressed concerns he has received from other emergency physicians in Rapid City, and the process by which the primary care physicians would be included.

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A motion: that the petitioners:

- a. continue to work with the board staff and the advanced life support (ALS) advisory committee on the protocols and training;
- b. the executive director will issue a temporary approval order for approved training programs and protocols pending final consideration by the full Board at a Board meeting

The motion was ratified by roll call vote (Bowman/unanimous).

The financial report was presented by the executive director. A motion: to instruct staff to discuss the concept of using funds for education with the Department of Health prior to considering legislation was ratified by roll call vote (Landeem/unanimous).

Mr. Klatt presented the Advisory Committee Business. The reports of the advisory committees meetings were accepted for information. A motion: to approve Cara Hamilton, MD, as the new physician member of the Genetic Counselor Advisory Committee to fill the vacancy left by Dr. Steven Benn who moved out-of-state, and to re-appoint Dr. Laura Keppen-Davis and Kali Smith, GC to a second term on the Genetic Counselor Advisory Committee was ratified by roll call vote (Landeem/unanimous).

Margaret Hansen presented the executive director report. Discussion was held about the process involved to provide testimony during legislative session. A motion: that no Board member may testify on behalf of the Board without first obtaining the Board's approval by majority vote was ratified by roll call vote (Bowman/unanimous). A motion: to accept the executive director report was ratified by roll call vote (Landeem/unanimous).

Confidential Physician Hearings (Closed Session pursuant to SDCL 36-4-31.5 unless privilege is waived by physician)

- a. Dr. James Oury: A motion: to amend the Stipulation for Dr. Oury to require that he successfully complete assessment with the Center for Personalized Education for Physicians (CPEP) program located in Denver, Colorado, as a condition of receiving a conditional South Dakota medical license was ratified by roll call vote (Lust/unanimous). Dr. Carlson and Dr. Rosario were recused from the vote.
- b. Dr. Claude William Evrard Zeifman: A motion: to adopt the Findings of Fact, Conclusions of Law, and enter an order deeming his application as withdrawn under investigation was ratified by roll call vote (Landeem/unanimous).
- c. Dr. Steven C. Myers: A motion: to refer this matter back to board staff to schedule an administrative hearing was ratified by roll call vote (Lust/unanimous). Dr. Landeen was recused from the vote.

The updated mission statement for the Board was presented for review. A motion: to approve the updated mission statement was ratified by roll call vote (Landeem/unanimous).

The draft language for a rule regarding physician supervision of a physician assistant spouse, or other family member in the healthcare field, was presented to the Board for review. The staff was directed to work with other interested parties for input, and then bring the updated language to the Board meeting on June 2, 2016.

The draft language for a rule for medical record documentation when prescribing opioids was presented to the Board for review. The staff was directed to review language used by other states when addressing this issue, add a definition for “chronic pain”, look at templates developed by the healthcare systems, get input from stakeholders, and then bring the updated language to the Board meeting on June 2, 2016.

The complaint and investigation docket was reviewed for information.

There being no further business, the meeting adjourned at 2:00 pm.

ⁱ 1-27-1.17. Draft minutes of public meeting to be available--Exceptions--Violation as misdemeanor. The unapproved, draft minutes of any public meeting held pursuant to § 1-25-1 that are required to be kept by law shall be available for inspection by any person within ten business days after the meeting. However, this section does not apply if an audio or video recording of the meeting is available to the public on the governing body's website within five business days after the meeting. A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do not apply to draft minutes of contested case proceedings held in accordance with the provisions of chapter 1-26.